

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MORRIS LEE LOVE, JR.,
Plaintiff,

v.
HANFORD KINGS COUNTY JAIL, et al.,
Defendants.

) Case No. 1:21-cv-01419-SAB (PC)
)
)
) ORDER DIRECTING CLERK OF COURT TO
) RANDOMLY ASSIGN A DISTRICT JUDGE TO
) THIS ACTION
)
) FINDINGS AND RECOMMENDATION
) RECOMMENDING DISMISSAL OF ACTION,
) WITHOUT PREJUDICE
)
) (ECF No. 6)
)

Plaintiff Morris Lee Love, Jr. is proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

I.

BACKGROUND

Plaintiff filed a complaint in this action on September 24, 2021. (ECF No. 1.) As Plaintiff did not pay the filing fee or submit an application to proceed in this action *in forma pauperis*, on September 28, 2021, an order directing Plaintiff to either pay the filing fee or submit an application to pay the filing fee within forty-five days. (ECF No. 3.) Plaintiff failed to respond to the Court's September 28, 2021 order. Therefore, on November 29, 2021, the Court ordered Plaintiff to show cause within fourteen days

1 why the action should not be dismissed.¹ (ECF No. 6.) Plaintiff has not responded to the order to show
2 cause and the time to do so has passed. Accordingly, dismissal is warranted.

3 **II.**

4 **LEGAL STANDARD**

5 Local Rule 110 provides that “[f]ailure...of a party to comply with these Rules or with any
6 order of the Court may be grounds for imposition by the Court of any and all sanctions...within the
7 inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n
8 the exercise of that power they may impose sanctions including, where appropriate,...dismissal.”
9 Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986).

10 A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
11 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d
12 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
13 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of
14 complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to
15 comply with court order).

16 In determining whether to dismiss an action, the Court must consider several factors: (1) the
17 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3)
18 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
19 merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423
20 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

21 **III.**

22 **DISCUSSION**

23 Here, Plaintiff's application to proceed *in forma pauperis* is overdue, he has not paid the filing
24 fee for this action, and he has failed to comply with the Court's order. The Court cannot effectively
25
26

27 ¹ On December 7, 2021 and January 3, 2022, the Court re-served the order to show cause at Plaintiff's current address of
28 record.

1 manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and
2 second factors weigh in favor of dismissal.

3 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
4 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
5 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
6 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d 639,
7 643 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility it is to
8 move a case toward disposition on the merits but whose conduct impedes progress in that direction,”
9 which is the case here. In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217,
10 1228 (9th Cir. 2006) (citation omitted).

11 Finally, the Court's warning to a party that failure to obey the court's order will result in
12 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
13 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court's November 29, 2021 order expressly
14 warned Plaintiff that his failure to comply with the Court's order would result in a dismissal of this
15 action. (ECF No. 6.) Thus, Plaintiff had adequate warning that dismissal could result from his
16 noncompliance.

17 Additionally, at this stage in the proceedings there is little available to the Court that would
18 constitute a satisfactory lesser sanction while protecting the Court from further unnecessary
19 expenditure of its scarce resources. Plaintiff has not paid the filing fee, and will likely attempt to
20 proceed *in forma pauperis* in this action, apparently making monetary sanctions of little use, and the
21 preclusion of evidence or witnesses is likely to have no effect given that Plaintiff has ceased litigating
22 his case.

23 **IV.**

24 **CONCLUSION AND RECOMMENDATION**

25 Based on the foregoing, the Court HEREBY ORDERS the Clerk of the Court to randomly
26 assign a district judge to this action.

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Further, the Court finds that dismissal is the appropriate sanction and HEREBY RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court order, failure to pay the filing fee, and for Plaintiff's failure to prosecute this action.

These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge's Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate's factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **January 26, 2022**

George A. Bae
UNITED STATES MAGISTRATE JUDGE